



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Richard Weeks
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT

ISSUED TO

Waverly Particleboard Company, LLC

Registration No. 50169

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and 10.1-1316, between the State Air Pollution Control Board and Waverly Particleboard, Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Waverly Particleboard" means Waverly Particleboard Company, LLC, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "CFR" means Code of Federal Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.

6. "Order" means this document, also known as a Consent Order.
7. "PCWP MACT" means the Federal National Emission Standards for Hazardous Air Pollutants ("NESHAPS") for the Plywood and Composite Wood Products source category, codified at 40 CFR Part 63, Subpart DDDD (§§ 63.2230 *et seq.*), that lists standards for emissions of hazardous air pollutants from affected facilities. The PCWP MACT provided for compliance for existing sources in the category by October 1, 2007 and also contained a "low-risk" subcategory that included a one year compliance extension to October 1, 2008.
8. "Regulations" mean the Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code ("VAC"), 9 VAC 5-10-10 *et seq.*
9. "Permits" means the Title V Federal Operating Permit issued on March 25, 2008 for operation of the Waverly Particleboard Company, LLC facility in Waverly, VA.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Virginia Air Pollution Control Law" means the laws located in the Virginia Code ("Va. Code") (1950), as amended, Va. Code § 10.1-1300 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Waverly Particleboard owns and operates a particleboard manufacturing facility in Waverly, VA. The components of particleboard are wood chips and resin to bind the chips into a rigid panel.
2. Waverly Particleboard is subject to the PCWP MACT. The PCWP MACT originally (effective September 28, 2004) contained a "low-risk" subcategory with a PCWP MACT compliance date (including one year compliance extension) of October 1, 2008. Reportedly, Waverly Particleboard had analyzed emissions and undertaken air quality modeling that demonstrated compliance with the low-risk MACT standards without installation of additional control equipment.
3. However, on June 19, 2007, the U.S. Court of Appeals for the District of Columbia Circuit Court ("Court") issued an opinion to partially vacate the PCWP MACT, including elimination of the low-risk subcategory and the one year compliance extension, returning the PCWP MACT compliance date to October 1, 2007 without the low-risk subcategory. Waverly Particleboard now is required to comply with the PCWP MACT, which Waverly Particleboard reported will require considerable additional costs in control equipment.

4. Waverly Particleboard requested a PCWP MACT compliance date extension, which the State was authorized to grant up to one additional year, pursuant to 40 CFR 63.6(i)(4)(i)(A), from October 1, 2007 to October 1, 2008. PRO air compliance notified Waverly Particleboard of the PCWP MACT compliance date extension to October 1, 2008 by letters dated August 15, 2007 and October 30, 2007.
5. Waverly Particleboard has not completed installation and compliance testing of equipment to meet the PCWP MACT compliance date of October 1, 2008. Waverly Particleboard violated 40 CFR 63, Subpart DDDD by not meeting the standards of the PCWP MACT.
6. Waverly Particleboard was advised of the above noncompliance by Notice of Violation dated October 22, 2008.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1309, orders Waverly Particleboard Company, LLC, and Waverly Particleboard Company, LLC agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Waverly Particleboard, for good cause shown by Waverly Particleboard, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Waverly Particleboard on October 22, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order and subsequent actions with respect to this Order, Waverly Particleboard admits the jurisdictional allegations, factual allegations and conclusions of law contained herein.
4. Waverly Particleboard consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Waverly Particleboard declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Waverly Particleboard to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Waverly Particleboard shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Waverly Particleboard shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Waverly Particleboard shall notify the PRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the PRO Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Waverly Particleboard.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Waverly Particleboard. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Waverly Particleboard from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Waverly Particleboard voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of February, 2009.

[Signature]
Regional Director

Waverly Particleboard Company, LLC voluntarily agrees to the issuance of this Order.

By: Bruce C. Spencer Treas. WPB LLC

Date: 2-6-09

Commonwealth of Virginia

City/County of Sussex

The foregoing document was signed and acknowledged before me this 6th day of

February, 2009, by Bruce C. Spencer, who is
(month) (name)

Treasurer of Waverly Particleboard, Inc. on behalf of Waverly Particleboard, Inc.
(title)

Shonda Bailey 347347
Notary Public

My commission expires: 10/31/12

APPENDIX A SCHEDULE OF COMPLIANCE

Waverly Particleboard Company, LLC shall complete the following, as required for compliance with the PCWP MACT:

1. By February 1, 2009, submit status report of the PCWP MACT compliance to PRO DEQ;
2. By February 1, 2009, begin research review;
3. By March 1, 2009, complete a review of biofilter or control device research in cooperation with the United States Department of Energy;
4. By March 15, 2009, begin development of phase I research of biofilter or control devices;
5. By March 29, 2009, begin application process for funding the research, construction and installation of a biofilter or control device;
6. By March 15, 2009, begin phase I research on biofilter or control device;
7. By April 15, 2009, complete application process for funding;
8. By May 1, 2009, submit status report of the PCWP MACT compliance to DEQ;
9. By June 1, 2009, begin evaluation of building modification;
10. By July 1, 2009, submit status report of the PCWP MACT compliance to DEQ
11. By August 1, 2009, complete evaluation of building modification;
12. By September 1, 2009, begin development of phase II research on biofilter or control device;
13. By September 30, 2009, complete phase II research on biofilter or control device.
14. By October 1, 2009, begin phase II research on biofilter or control device;
15. By October 15, 2009, complete funding program;
16. By November 1, 2009 must demonstrate to DEQ that all aspects of the project to comply with the PCWP MACT are on schedule to be completed within the remaining 9 month period. However, if WPC determines at any time during the first nine months that compliance with the PCWP MACT through this Consent Order is infeasible, WPC shall immediately notify DEQ and abstain from the remaining milestones of the order. WPC shall immediately cease purchase of raw material and shutdown the facility within 60 days of notification. WPC shall also do the following leading to the permanent shutdown of the facility:
 1. Assure all hazardous waste onsite is properly managed in accordance with the Virginia Hazardous Waste Management Regulations, and

2. Formally request DEQ to rescind the WPC Title V and associated air permits concurrent with submitting a closure notification letter within 60 days of notification.
17. By November 1, 2009 submit status report of the PCWP MACT compliance to DEQ;
18. By December 1, 2009, evaluation and design of emissions ducting system;
19. By January 15, 2010, complete phase II research on biofilter or control device;
20. By February 1, 2010, submit status report of the PCWP MACT compliance to DEQ;
21. By March 1 2010, begin construction of building modifications;
22. By March 15, 2010, begin construction of emissions ducting system;
23. By March 15, 2010, begin installation of biofilter or control device;
24. By April 1, 2010, complete installation of emissions ducting system;
25. By April 15, 2010, complete installation of biofilter or control device;
26. BT April 31, 2010, complete construction of building modifications;
27. By May 10, 2010, complete shakedown and checkout of the biofilter or control system;
28. By May 10, 2010, comply with the PCWP MACT and relevant PCWP MACT requirements in the Permit (or successor Permit);
29. By May 10, 2010, submit status report of PCWP MACT compliance to DEQ;
30. By November 5, 2010, (within 180 days after May 1, 2010), complete testing of the biofilter or control system and demonstrate compliance with the PCWP MACT (reference 40 CFR 63.7(a)(2)).
31. Within 45 days of compliance testing of biofilter or control system for demonstration of compliance with the PCWP MACT, provide the report of compliance testing to DEQ; and
32. Mail all submittals and reports by this Appendix A to:
Charles B. King, Air Compliance Manager
DEQ, Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060